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RETREAT FROM COMPETITION

Trucking Regulation at the ICC

Report of the
Joint Economic Committee
Congress of the United States

Together With
Additional & Dissenting Views

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INTRODUCTION

The trucking industry regulated by the Interstate Commerce Commission is a national giant. It generates $43 billion a year in revenue, employs nearly one million people, and has an influence that pervades our national economic life. 1/

1/ Private carriers -- such as Sears or duPont, which have their own trucking fleets -- and shippers of "agriculturally exempt" commodities and foodstuffs are not regulated by the ICC. Regulated truckers fall into two categories: common carriers and contract carriers. Common carriers publish tariffs, which are kept on file with the ICC; they are obliged to take any traffic that is tendered so long as it meets the published tariff description. Contract carriers are under contract to particular shippers. They are not obliged to take other traffic. There are about 17,000 to 18,000 carriers regulated by the ICC, of which the great majority (about 13,000) are "mom and pop" businesses (under $500,000 in annual revenue); there are also a handful of billion dollar giants such as Roadway Express. While the ICC was set up pursuant to the Interstate Commerce Act in 1887, it did not begin regulating trucking until 1935, when Depression-era legislation was enacted. The Department of Transportation exercises a degree of authority over safety and insurance matters; and the Federal Trade Commission, pursuant to the Robinson-Patman Act, maintains an interest in "uniform zone pricing" (i.e., certain requirements to charge the same price, including delivery, within specified zones); this FTC authority is subordinate to that of the ICC. Also, the Justice Department has authority to prosecute when carriers or shippers who operate outside the scope of their limited antitrust immunity. For our purposes, the ICC is the chief regulator of trucking.

The establishment of a freely competitive market in the trucking industry is a widely accepted national goal, and for good reason: it makes sound economic sense. The costs borne by shippers for the hauling of commodities are reflected in the prices consumers pay for products that they purchase as well as in the international competitive position of U.S. exports. A competitive market situation will tend to reduce these costs, a restrictive one to raise them. The trucking industry is also important for the enormous consumption of oil it involves. If the free market allocates trucking routes and operating authorities to their best uses, this precious resource will be efficiently employed; if not, it will be wasted. Finally, the preservation of competitive arrangements in this industry, as in others, will serve to ensure the right of business, particularly small business, to enter the field and operate in it with maximum freedom and flexibility. The heavy hand of government intervention, however, will constrict this environment, to the detriment of both firms and consumers.

The Motor Carrier Act of 1980, passed with wide bipartisan support, made substantial changes in the statutes governing trucking regulation and constituted, in the aggregate, a substantial step in the direction of deregulation. On November 17, 1981, the Joint Economic Committee conducted a review of current ICC policy, with an eye to determining the status of deregulation efforts. The Committee heard testimony from a

bipartisan panel of five recognized experts on transportation issues, including outspoken critics of ICC policies as well as the incumbent ICC Chairman, Reese Taylor. Other witnesses were: Honorable Thomas A. Trantum, former Commissioner of the ICC, and presently Senior Vice President, L.F. Rothschild, Unterberg, Towbin; Honorable Marcus Alexis, former Commissioner of the ICC, and presently Professor of Economics, Northwestern University; Honorable Alfred Kahn, former Chairman of the Council of Wage and Price Stability, and presently Robert Julius Stern Professor of Economics at Cornell University; and, Thomas Gale Moore, Senior Fellow, Hoover Institution, Stanford University, and formerly a member of the Interstate Commerce Commission transition team of the Reagan Administration.

It is the Committee's conclusion that the ICC under Chairman Taylor has abandoned the goal of a freely competitive trucking market and has moved to reverse the progress toward deregulation which has recently been made. This policy contradicts the intent of Congress embodied in its passage of the 1980 Motor Carrier Act. It is also at odds with the philosophy of the Administration of President Ronald Reagan on the general subject of regulatory reform.

The Motor Carrier Act of 1980

The Motor Carrier Act of 1980 was intended to introduce structural reform into an industry that had become layered-over in regulation and bureaucracy. The measures embodied in the Act were initially proposed by the Ford Administration and subsequently pursued under President Carter. Final passage of the Act was supported by groups as diverse as the National Federation of Independent Business, the National Association of Manufacturers, and Common Cause.

The chief objective of the Act was clear, as stated in a single sentence: "This Act is part of the continuing effort by Congress to reduce unnecessary regulation by the Federal Government." Important provisions of the Act included standards that reduced entry barriers; a lessening of route restrictions; an enhanced flexibility in provisions for determining rates; and the elimination in 1984 of the antitrust exemption from "single-line" price fixing for large general freight firms.

The first provision of the Act was its centerpiece. It instructed the ICC to issue operating licenses to all applicants determined to be "fit, willing, and able" to provide such services, unless there were a clear demonstration that this would be inconsistent with "public convenience and necessity."

Previously, operating licenses had been issued only when public convenience and necessity could be affirmatively demonstrated. The Act's new standard constituted a clear shift of this historic burden of proof from those who sought entry to those who would deny it.

In testimony before the JEC, the panel was of one mind that the statute, as written, permits a broad degree of discretion in its enforcement by the ICC. Until 1981, a majority of the Commission had voted repeatedly in favor of pursuing an accelerated pace of deregulation. It granted broad operating authorities applied for by truckers, giving them permission to haul more commodities to and from more places, as well as easing new entry and the setting of rates and tariffs. All witnesses before the Committee agree that this was an entirely legal and legitimate interpretation of the Motor Carrier Act, consistent with the intent of Congress.

Data provided the Committee indicated that in the 16 months since the passage of the Act, motor carriers had displayed a new willingness to offer volume or cost-related discounts on freight rates, and that both carriers and shippers had moved aggressively to explore new business opportunities. Service availability to cities and towns remained as good as before, and in some instances, improved. Former Commissioner Trantum noted that during this time, while the Dow Jones Index had dropped 2

percent, a group of 20 trucking stocks had appreciated in value by 20 percent.

Trantum explained to the Committee why he had enlisted in the cause of deregulation during his tenure at the ICC:

> In a rigid regulatory environment, the ICC diverts shipper and carrier attention to itself and away from the business of commerce. By its very existence, regulation aggravates supply/demand imbalances and stimulates inefficiency. To some carriers, learning and minipulating the regulatory system to achieve competitive advantage becomes a primary objective, rather than satisfying the needs of shippers in the most efficient manner...I have stated many times that the experience in reducing transportation regulation is perhaps the best example how supply side incentive oriented economics works as a practical matter.

The ICC Under Chairman Taylor

The arrival of a new ICC Chairman in June 1981 led to a different voting pattern in ICC interpretation of the statute. Witnesses from all points along the political spectrum indicated to the Committee their strong sense that the Commission in recent months had made, as Professor Alfred Kahn put it, a "clear retreat from free market principles." Thomas Gale Moore of the Hoover Institution noted pointedly that after original implementation of the Motor Carrier Act, and the free market oriented interpretations of the ICC under former Chairman Darius

Gaskins, the value of operating licenses fell to zero. In contrast, Moore noted, operating licenses have again attained a positive market value, indicating, he said, that some carriers find it easier to purchase operating rights from existing carriers than to apply to the ICC for those rights.

Former Commissioner Marcus Alexis was more direct. He charged before the Committee that,

> In a series of decisions, the Commission has embarked on a deliberate, calculated policy to reimpose restrictive, burdensome, inefficient, inflationary-prone, and fuel-wasting regulations on the trucking industry....I think the signal has gone out from the ICC that business-as-usual is back in and {therefore} these pro-competitive moves have been inhibited.

That the Interstate Commerce Commission, as presently constituted, is disposed to continuing regulation, rather than making efforts at deregulation, is evidenced by a number of procedures that have been established, and actions that have been taken, in recent months. Some of these were brought to light in the Committee's hearing:

(1) Disallowing Rate Reductions

Tariff filings are reviewed more closely than before. Instead of acting in response to complaints of outside parties, actions to prevent rate discounting are being initiated by the ICC itself; Chairman Taylor argues in effect that it is the ICC's job to prove that a rate discount is not "predatory," even when no one is complaining about it. "We are beginning to see a number of filings that will have to be carefully examined to make sure they are not predatory or discriminatory," Chairman Taylor testified.

Indicative of the Chairman's attitude is the recent case of Roadway Express, a large trucking company, which filed for the right to offer 90-day promotional rates for "backhaul" out of the Pacific Northwest, i.e., to try to induce business on its trucks that are returning from that area and which otherwise would go empty. Roadway had never served the Pacific Northwest before and wished to use the promotional rates to develop business. The tariff, according to standard procedure, went into effect, subject to being suspended by a vote of the Commission. The Commission took up the matter, but two Commissioners voted not to suspend. Since it would have taken a majority of the four Commissioners to suspend the tariff, and two voted not to do so, the tariff remained in effect. But Chairman Taylor filed a

strong dissent, indicating his belief that the tariff should have been suspended.

Chairman Taylor's dissent read in part:

> ...when the issue is raised with regard to discounts of this magnitude, it is incumbent on the proponent to at least deny the allegation and present some supportive cost evidence. Roadway Express did neither. Instead, it defended its proposed discounts with irrelevant analogies to retail stores, shopping centers, and airline the industry.

Professor Kahn addressed himself to this matter before the Committee:

> I find ominous this emphasis on the danger of "predatory" pricing, the danger of "discriminatory" pricing. I find ominous the Chairman's dissent in that Roadway Express case. They did, in fact, supply an answer. I read their answer. It said, to me, unless it was rebutted, they could not possibly have been "predatory." It did refer to the airline industry and to grocery stores. Those are not irrelevant. Those are perfectly good examples of how competition can be working on a promotional basis without injuring the effectiveness of the industry.

Later, Thomas Gale Moore said:

> The arguments about predatory pricing are simply a method of preventing price competition, and in fact the dissent which you {Chairman Reuss} quizzed him about is a perfect example where there was a price competition developing and he was opposed to it, and I endorse what you said.

(2) Requests for More Regulators

The Chairman has sought a larger enforcement budget for the ICC. These requests come at a time when, because of the Administration's deregulation philosophy and its concern about the widening budget deficit, enforcement budgets at other regulatory agencies (the Food and Drug Administration, the Federal Trade Commission, the Occupational Health and Safety Administration, the Consumer Product Safety Commission, and the Environmental Protection Agency, among others) are being reduced. Professor Kahn, a former Chairman of the Civil Aeronautics Board, was blunt in assessing the meaning of a large enforcement budget: "Enforcement {means} prohibiting price competition. It means examining every tariff, every price change, and making sure there was never a deviation from the tariff. That is a very good way of preventing price competition."

(3) Burdensome Hearing Requirements

Oral hearings are being required more frequently than before. Under Chairman Gaskins, the ICC moved away from hearings for

routine applications both because of the enormous expense they involved for private parties as well as the delays. The notion that hearings for operating authority may now be required is producing, according to some, a chilling effect on truckers who might otherwise be seeking new or expanded authority. In addition, because of budget restrictions, it is becoming likelier that such hearings will be held in Washington, instead of in the field, and thus promise to be even costlier than before.

(4) Narrower Grants of Authority

While it may be true, as Chairman Taylor suggested to the Committee, that the percentage of grants "in whole or in part" of new operating authority has actually increased in recent months, a pattern seems to have emerged of narrower than usual grants of authority (grants "in part" rather than grants "in whole"). Many truckers' requests for new authority are being restricted to only those territories and commodities specifically noted by supporting shippers. Previously, the testimony of shippers was taken to indicate a broad potential demandthat was used to justify the requested authority. Under Chairman Taylor, this is no longer the case. Thomas Gale Moore cited, for example, the case of a trucker, Hagen, Inc., of Sioux City, Iowa, which applied for authority to haul general commodities nationwide. According to Moore:

(Hagen) asserted that a 50-state grant would allow it to consolidate its numerous and fragmented authorities. In September, two months ago, the Review Board of the ICC granted authority only for 'transporting essentially the traffic of those shippers at the points or facilities where shippers demonstrate a need for service.' For example, Hagen was restricted to hauling chemicals between Terra Chemicals International, Inc., at points in 17 States and other points in the U.S. Other similarly limited authority was granted. The Board's actions fell far short of the 50-state grant which would have increased the efficiency of the Hagen system, and would have been consistent with the Motor Carrier Act of 1980."

Other examples brought to the Committee's attention include that of the Windgate Trucking Company of Albany, Georgia; the M.E. Hall Company of Montevallo, Alabama; the Hohenwald Truck Lines of Tennessee; and the D.M. Bowman Company of Maryland. 4/

4/ The Windgate Trucking Company applied for authority to haul "general" commodities anywhere within the Continental United States. In support of its application, Windgate pointed to the fact that four large companies had said they wanted Windgate's services. The Commission gave Windgate authority, however, only to transport general commodities between the facilities of the shippers and points in the U.S., i.e. all shipments for Windgate were required either to originate or terminate at one of these four specified companies. The M.E. Hall Company applied for authority to haul general commodities between a three-county area in Alabama and points in 14 States. The ICC granted general commodity authority for one Alabama county; food and related products for another county; and food-related products, and tires for the third Alabama County. The Hohenwald Truck Lines asked for the right to carry general commodities anywhere in Tennessee, Arkansas, and Mississippi. According to the New York Times of July 30, "On the strength of a tentative okay from the Commission, it invested $700,000 in new equipment. But competitors protested, and the Commission has now withdrawn the license." (Hohenwald has recently received authority after much public pressure.) The Times also cited the case of D.M. Bowman, a Maryland trucker, who received permission from the ICC in April to haul building materials nationwide. But the Commission replied, according to the Times, that Bowman "never proved there was a market for its services. It will thus be licensed to haul only building supplies for a single shipper."

Former Commissioner Alexis summarized the situation when he said:

> I would...like to comment on the statistics on grants that the Chairman {gave} and point out that they are particularly misleading. You will notice that the statistics say "in whole" or "in part." The "in part" is particularly interesting. {It refers to} the way in which those grants have been restricted. It is the way in which they have been limited by geography. It is the way in which the commodity descriptions have been limited. It's the plant site restrictions imposed on them. These are the ways in which these grants have been issued.

Alexis concluded:

> There may be a numerical similarity between what went on when I was at the Commission and what is going on now, but that similarity is purely superficial. Quantities may be similar, but the quality of grants has deteriorated....

(5) Opposition to Appealing Recent Court Decisions

Recently, the U.S. Court of Appeals for the Fifth Circuit ruled that ICC regulations issued by the ICC were, in certain instances, so broad as to be,in the Court's opinion, inconsistent with the Motor Carrier Act of 1980. 5/ By a 2-2 decision, the ICC has decided not to appeal this decision; Chairman Taylor joined in voting against an appeal. Repeatedly before the Committee, Chairman Taylor cited the decision of the Fifth Circuit Court in support of his contention that the preceding Commission had gone too far. Indeed, Chairman Taylor testified before the Committee:

5/ The Court ruled that the ICC was incorrect in insisting that commodity descriptions not be narrower than a "STCC" code. STCC stands for Standard Transportation Commodity Code, and means in effect one of about 40 relatively broad classifications of commodities. In the past, the ICC would have given authority to a trucker, for example, to carry tomatoes on a particular route. What the new ICC rule would have done was to avoid such narrow categories and allow the trucker authority instead, say, to carry all "foodstuffs and kindred products." This would have had the effect, disallowed by the Court, of making some grants of authority even broader than that requested by the trucking firm.

> In light of the many broad grants of operating authority that have been issued to carriers in the last several years, the Commission is currently reexamining the scope of the common carrier obligation.

Other witnesses had feelings about the decision very much at variance with Chairman Taylor's. Professor Kahn told the Committee:

> There are places in which {the Court} seems to say that nobody should be able to get a certificate who is not fit, willing, and able -- in other words anyone who does not already have everything to provide {the service he seeks}. So there are elements of this decision which seem to be flagrantly anti-competition, and I would think the Commission would appeal it.

Former Commissioner Trantum told the Committee:

> ...I was very, very encouraged by what Chairman Taylor had to say in terms of supporting competition and supporting the implementation efforts that the Commission went through and {therefore} I was a little bit surprised that Chairman Taylor himself voted against the Supreme Court review of the Fifth Circuit decision. It seems to me that that's not quite consistent.

(6) Proposal for Restrictive Standards

In setting guidelines for approval of applications for operating authority, Chairman Taylor made the formal suggestion before the Committee that the "public convenience and necessity" standard be eliminated in favor of a greater emphasis on the "fit, willing, and able" standard. In explaining his suggestion, Taylor said:

> What we should have is a precise "fit, willing, and able" test which is carefully crafted so it doesn't fluctuate in its severity or laxity with a change in Administrations. It shouldn't matter in terms of a carrier getting authority whether Reese Taylor or Marcus Alexis is Chairman of {the} Commission, and that's why we have suggested there be some additional explanatory language to determine for all time what fitness, willingness, and ability {are} really intended by Congress to mean. All carriers, regardless of size, should have the opportunity to compete. Many of the large ones have gotten all they want out of the ICC and now we are looking at the little ones. I believe this is too important to be left {to} the whim and caprice of individuals.

Former Commissioner Alexis replied to Chairman Taylor's suggestion by saying:

> ...{an} emphasis on such things as financial, operational, and safety, fitness would in fact be more restrictive than the present standard in the 1980 Motor Carrier Act and would be a step backwards.

Professor Kahn's comment, quoted above, about the decision of the Fifth Circuit Court was also intended to apply to the suggestion of Chairman Taylor about the "fit, willing, and able" standard.

According to witnesses, however, while this latter standard would seem innocuous, it could be used capriciously to justify denials of operating authority if carried to extreme. For example, if a trucking firm wanted to expand its authority so that it might haul more traffic, the ICC could deny it permission on the grounds that the firm was not "fit" to expand for the reason that it did not possess enough trucks and employees. Such reasoning was often used by the Commission in the past to deny requests for operating authority. Of course, it is questionable whether a firm can prudently acquire additional trucks and hire employees prior to receiving the approval of new authority.

Administration Philosophy

Chairman Taylor's position is that the Interstate Commerce Commission under his Chairmanship has simply been carrying out its statutory duty as the Commission understands it, and that the Motor Carrier Act, while commonly regarded as an instrument of limited deregulation, in fact requires a good deal of continued regulation. Nonetheless, Chairman Taylor conceded that the statute does permit a liberal interpretation. Chairman Reuss addressed this same question directly to all other members of the panel. He said:

> Under present law, which is basically the 1980 Trucking Act, is there anything under the sun to prevent a conscientious Commissioner on the ICC from so exercising his discretionary authority as fully to support the goals of lower prices and hence less inflation, of expanded entries so as to prevent cartelization, and saving energy? Is there anything in the law which prevents a Commissioner from doing that if he wants to do it?

All panelists acknowledged that such interpretations would be fully within the scope of the law.

The Committee then noted with interest the position on trucking deregulation expressed by President Reagan during his campaign for election in 1980 in a letter to the American Farm Bureau. The letter read:

> We must restore the health of the Nation's transportation system. The Reagan-Bush Administration will define the role of government in transportation and will permit the free market to promote competition, improve efficiency, reduce costs, and improve the return on investment. The role of government must change from one of overbearing regulation to one of providing incentives for innovative technological development. Our objective will be to deregulate and revitalize the entire transportation industry -- rail, highway, and water -- to reduce waste and to bring commodities to markets swiftly, safely, and economically. (Emphasis added.)

The Committee noted with encouragement Chairman Taylor's own philosophy as expressed before the Committee, and in particular his statement that, "We are not interested in imposing petty fines, or engaging in midnight raids. Our role requires a fine touch and not heavy-handed regulation."

Chairman Reuss asked Chairman Taylor what guidance he had received from the Administration as to the policy that it expected the ICC to conduct in the area of trucking. Chairman Taylor replied:

I have never had any direction or guidance from the Administration or from any official of the Administration as to where they wanted to see us go...I took Marty Anderson (the President's chief domestic adviser) to lunch with me one day and I tried to get him to tell me where he thought we ought to be going. So I have looked and I have not been told. That is the state of the record.

Committee Recommendations

The Committee notes the analysis of Thomas Gale Moore that trucking deregulation in New Jersey, Great Britain, Australia, and New Zealand has not produced a phenomenon which Chairman Taylor said he feared, namely, that of large truckers and shippers monopolizing the industry. To the contrary, Mr. Moore's analysis indicated the generally widespread and significant economic benefits produced in environments of trucking deregulation. The Committee finds that, given inflation, the problems of dwindling oil supplies, and excessive government regulation burdening the public at this time, a vigorously pursued policy of deregulation in the trucking industry, not now being followed by the ICC, would prove decidedly in the national interest.

The Committee notes that it is not unusual for the President to provide advice to an independent regulatory agency, even though that agency is technically an appendage of the Congress and does not fall within the supervision of the Administration. At the hearing, Chairman Reuss cited the example of Administrations, whatever their political stripe, issuing without inhibition strong advice on monetary matters to the Federal Reserve Board.

The Committee urges that President Reagan consider giving immediate public guidance to the Interstate Commerce Commission on the subject of trucking deregulation, and in particular that he urge it to pursue the policy on trucking deregulation enunciated in Candidate Reagan's letter of October 1980 to the American Farm Bureau. The Committee finds that recent actions of the Commission are inconsistent with the Administration's free market philosophy in general and with President Reagan's expressed policy of reducing government regulation in particular.

The Committee notes that the ICC currently has only four sitting Commissioners (three Republicans, one Democrat), although the statute provides for 11 seats. The Committee therefore recommends that the President take all necessary steps to create a pro-competitive majority on the Commission.

HENRY S. REUSS
RICHARD BOLLING
LEE H. HAMILTON
GILLIS W. LONG
PARREN J. MITCHELL
FREDERICK W. RICHMOND
CLARENCE J. BROWN
MARGARET M. HECKLER
JOHN H. ROUSSELOT
CHALMERS P. WYLIE

ROGER W. JEPSEN
STEVEN SYMMS
PAULA HAWKINS
WILLIAM PROXMIRE
EDWARD M. KENNEDY

ADDITIONAL VIEWS

This report is based on testimony presented during a hearing before the Joint Economic Committee on November 17, 1981. At that time, evidence, was presented indicating that Interstate Commerce Committee Chairman Reese Taylor was dragging his feet with regard to trucking deregulation, as mandated by the Motor Carrier Act of 1980. Although Chairman Taylor defended his record, the Committee report concludes that "the ICC under Chairman Taylor as abandoned the goal of a freely competitive trucking market and has moved to reverse the progress toward deregulation which has recently been made."

We believe that this criticism is too harsh. Chairman Taylor was only appointed in June 1981, and since then a large number of seats on the ICC have remained vacant. Moreover, although we support the goal of deregulation, we believe there is merit to Chairman Taylor's contention that the Motor Carrier Act of 1980 does not allow him to totally deregulate the trucking industry. If this is what Congress desires, then perhaps further legislation will be necessary. Lastly, we are sympathetic to the problems of deregulating an industry which has been heavily regulated for almost 50 years. In the interest of fairness and

efficiency, we believe that trucking deregulation is best accomplished in an orderly fashion and without haste.

In conclusion, we reiterate our support for trucking deregulation, but we emphasize the need to move slowly and deliberately in order to avoid damage to the industry. Moreover, we feel that the harsh criticism of Chairman Taylor contained in this report is premature and excessive.

VICE CHAIRMAN ROGER W. JEPSEN
REPRESENTATIVE CLARENCE J. BROWN
SENATOR PAULA HAWKINS
REPRESENTATIVE MARGARET HECKLER
REPRESENTATIVE CHALMERS P. WYLIE

DISSENTING VIEWS

It is incumbent upon the Chairman of the Interstate Commerce Commission to provide a clear interpretation of what is and is not permitted under the Motor Carrier Act of 1980.

In several instances, this Joint Economic Committee report makes unfavorable comparisons between Commission actions and a "freely competitive trucking market." A free market, in the strict sense, may indeed be a worthwhile goal, but it is not consonant with the congressional goals and findings set forth in the Motor Carrier Act. That legislation called for "competitive and efficient transportation services" pursuant to regulation by the ICC subject to "well-defined parameters within which it may act pursuant to congressional policy." A "freely" competitive market is clearly not envisioned in the Act as evidenced by the continuation of antitrust immunity, entry requirements, rate regulation, and the specific statutory prohibitions against discrimination and predatory practices.

Mr. Taylor was appointed by the President and confirmed by the Senate to implement the law as given to him by the Congress. As the record shows, considerable interpretive flexibility had been granted to the Commission and its Chairman by the Congress.

This was not a congressional oversight; such flexibility is necessary for effective implementation.

The JEC hearing on November 17, 1981, contributed little to achieving the goals of the Motor Carrier Act of 1980. The "evidence" contained in the JEC report reflects nothing but differing perception on the intent of Congress. It is no more proper for former chairmen to "expedite" the law than it is for the current chairman to "impede" the law. Ideally, the ICC should be a netural actor -- a simple conduit between the Congress and the motor carrier and shipping industries.

Chairman Taylor's critics are disturbed that he is not, in their view, pursuing a tradition established by his predecessor. Those critics seem to have forgotten that Mr. Taylor is now chairman of the ICC because of the overwhelming desire of the American public to have tradition broken.

* A serious misstatement of the law on page 4 (last paragraph) undermines the report and is the basis of other misstatements appearing throughout the text. The report assumes Congress adopted a "fitness only" test, as presently advocated by Chairman Taylor, absent a clear demonstration that a grant of authority would be inconsistent with public convenience and necessity. This is not present law. Before authority can be granted, the Motor Carrier Act requires evidence "that the service proposed will serve a useful public purpose, responsive to public demand or need." This clear statutory requirement is consistently ignored in the report.

* The report erroneously indicates that operating rights have value. Such rights have <u>no</u> value; the few purchase transactions that have occurred involved goodwill and personal or real property, not operating rights.

* The House Public Works and Transportation Report (96-1069 accompanying H.R. 6418), which was accepted by the Senate as the Conference Report, states: "The new entry section provides for a balanced approach to entry, which...will encourage new applicants to file for authority to provide needed service." Further, it states -- "Persons supporting the application will be required to come forward with some evidence of a public demand.... The normal way to establish this has been for applicants to submit evidence of some of those who would use the service proposed. The Committee thinks that this is still the most effective evidence, for it provides the Commission with the information it needs to frame a grant of authority...." (emphasis added)

There are several provisions of the Motor Carrier Act of 1980 of importance to agriculture which needs to be fully explained by the ICC and understood by the shipping public. They should not, however, be implemented without careful and thorough analysis; to do otherwise would compromise the effect of the law as well as the intent of Congress. What is sufficiently careful and thorough, of course, is a matter of opinion.

SENATOR JAMES ABDNOR